IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 215 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ARJANDAS KIMMATRAI SADNANI - Appellant(s)
Versus
RAMESH HASARAM SADNANI & 3 - Defendant(s)

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Appearance :
MR PV NANAVATI for Appellant(s) : 1,
RULE SERVED for the respondents.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 24/11/2005

ORAL JUDGMENT

1. By this appeal, a judgment and decree passed by learned Judge of City Civil Court No.6, at Ahmedabad, in Civil Suit No.395 of

1976 on 30th September, 1982, is under challenge.

2. The aforesaid suit was filed by respondent No.1 against the appellant as defendant No.2 and rest of the respondents herein. The suit was filed to recover an amount of Rs.25,000/- with further interest thereon and costs of litigation. The said suit was filed by present respondent No.1 claiming that while he was minor, his father had deposited an amount of Rs.25,000/- with the defendants upon an assurance that his father would be given 1/3rd partnership in the business and would be paid Rs.500/- by way of interest on the amount. The said amount was received by the present appellant-original defendant No.2 but, later on, the word was not kept. In the meantime, the plaintiff's father expired so also his mother and Collector, Ahmedabad, was appointed as guardian of the property of the minor whereas the maternal grandparents of the plaintiff-Minor Ramesh were appointed as guardian of the person of the minor.

3. The defendant came out with a case of total denial.

4. The Trial Court, after considering rival side pleadings, framed issues at Exh.26, as under :-

(1) Is it proved that defendant No.3 is a partner (along with defendant No.2) in the business carried on under name and style of defendant No.1?

(2a) Is it proved that there was an agreement between Hasaram, father of minor plaintiff Ramesh and defendants Nos.2 and 3 that defendants Nos.2 and 3 will take the said Hasaram in their partnerships business of defendant No.1 with effect from 1st April, 1967 and that Hasaram should invest a sum of Rs.25,000/- in such partnership?

(b) In the above connection, is it also proved that they further agreed that in the meantime the defendants Nos.2 and 3 will pay to the said Hasaram a sum of Rs.500/- every month with effect from 1st August, 1966 by way of interest or damages?

(3) It is proved that Hasaram paid to the defendants Nos.2 and 3 the following amounts, viz.

Rs. 10,000/- on 18.7.1966.

Rs. 10,000/- on 1.8.1966.

Rs. 5,000/ on 1.11.1966.

Rs. 25,000/- by way of deposit on connection with the aforesaid agreement between the said Hasaram on the one hand and defendants Nos.2 and 3 on the other?

(4) Is plaintiff entitled to claim return of the aforesaid sum of Rs.25,000/- from the defendants Nos.2 and 3, is plaintiff also

entitled to claim any interest or damages thereon, if yes, at what rate and from which date?

(5) Is the suit barred under the provisions of limitation Act?

(5a) Is the suit not maintainable in its present form?

(6) What order?"

The Trial Court gave findings on the issues as under:-

"(1) No.

(2a) Yes, but that agreement was between Hasaram and defendant No.2.

(2b) Yes, but the deft. No.2 agreed to pay Rs.500/- per month to Hasaram.

(3) Yes, but the defendant No.2 alone received the amount of Rs.25,000/- by way of deposit from Hasaram.

(4) Yes, but the plaintiff is entitled to recover the amount of Rs.25,000/- from deft. No.2 along with future interest at the rate of 6% per annum.

(5) No.

(5a) Yes, it is maintainable in the present form.

(6) As per final order."

5. Aggrieved by the decree, original defendant No.2 has preferred this appeal.

6. Earlier, in the year 1983, an application was given to this Court to the effect that the original plaintiff has attained majority and, therefore, fresh notice be issued. Accordingly, notice was issued and he was represented by learned Advocate, Mr. Mulchandani.

6.1 When the matter came up for final hearing on 1.9.2005, it was noticed that learned Advocate, Mr. Mulchandani has also expired and, therefore, a fresh notice was ordered to be issued upon respondent No.1-original plaintiff. The said notice came to be served on him on 14th September, 2005. However, he seems to have chosen not to contest this appeal.

7. Learned Advocate, Mr. P.V. Nanavati, for the appellant is heard. He has taken this Court through the judgment and the decree

impugned herein, so also the evidence part. He submitted that the plaintiff's case is accepted by the Trial Court in absence of any corroborative documentary evidence of contemporaneous nature and, therefore, the decree may be set aside.

8. The question that arises for determination by this Court is whether the Trial Court can be said to have committed an error in passing the decree in absence of direct documentary evidence. The answer to the above question is in the negative for the reasons that would be recorded in the paragraphs to follow.

9. Having gone through the judgment and the decree, it would be appropriate to record that, although the plaintiff's case is not founded on any documentary evidence, the plaintiff has been able to adduce sufficient oral evidence in support of his case. The plaintiff has examined four witnesses in support of his case, namely, Ramchand Rijhumal, Ashokkumar Jayantilal Soni, Lalchand Ramchand and Shobhraj Lanchand. There are documntary evidence with lists at Exh. 2, 8, 38, 68 and 127. These pieces of documentary evidence do not directly support the case of the plaintiff about the deposit but are circumstances to support his case. Differently put, the case is not founded on any single

documentary evidence in the form of receipt or promissory note or any such document, but bank passbooks, etc. are produced to support the case of the plaintiff.

10. On the other hand, defendants No.2 and 3 have entered the witness box and have examined one Dolatram Govindram in support of their case. They have also produced certain documentary evidence to counter the case of the plaintiff.

11. It cannot be overlooked that documentary evidence is not a *sine qua non* for accepting the case of parties. Differently put, the case of a part cannot be thrown out only on the basis that there is no documentary evidence in support of his case. In civil disputes, cases are to be decided on the principle of preponderance of probability.

12. The Trial Court has taken into consideration all relevant aspects and has, in detail, discussed the oral evidence while placing reliance thereon to accept the case of the plaintiff. Learned Advocate, Mr. Nanavati, was unable to point out any perversity in the judgment while evaluating the evidence by the Trial Court. The Trial Court has taken into consideration the transactions with UCO Bank, Baroda Branch,

from various accounts. The amounts which have been withdrawn total upto the amount claimed by the plaintiff. It also appears from the evidence that the amount was accepted by defendant No.2., present appellant, and, therefore, ultimately, the liability is fastened on defendant No.2 (present appellant) to repay the amount while passing the decree.

13. The Trial Court has given due and adequate consideration to the evidence on record and has properly evaluated the same. No perversity is found. This Court is in agreement with the reasons recorded and conclusions reached by the Trial Court and, therefore, no interference is called for. The appeal must fail and the same is dismissed. Judge and decree of the Trial Court is confirmed. No costs.

[A. L. DAVE, J.]

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